

## SECOND DIVISION

[ G.R. No. 193507, January 30, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REY MONTICALVO Y MAGNO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

This is an appeal from the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-HC No. 00457 dated 3 December 2009 affirming *in toto* the Decision<sup>[2]</sup> of Branch 19 of the Regional Trial Court (RTC) of Catarman, Northern Samar, in Criminal Case No. C-3460 dated 18 October 2005 finding herein appellant Rey Monticalvo y Magno guilty beyond reasonable doubt of the crime of rape of a demented person committed against AAA,<sup>[3]</sup> thereby imposing upon him the penalty of *reclusion perpetua* and ordering him to pay P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

Appellant Rey Monticalvo y Magno was charged with raping AAA in an Information<sup>[4]</sup> dated 30 April 2003, the accusatory portion of which reads:

That on or about the 9<sup>th</sup> day of December 2002 at about 7:00 o'clock in the evening in Bgy. XXX, Municipality of XXX, Province of XXX, Philippines and within the jurisdiction of this [H]onorable [C]ourt, the above-named [appellant], actuated by lust and with lewd design, with force and intimidation, did, then and there, wil[l]fully, unlawfully and feloniously have carnal knowledge with [AAA], 12 years old and is **suffering from mental disorder or is demented or has mental disability**, without the consent and against the will of said victim.<sup>[5]</sup> [Emphasis supplied].

On arraignment, appellant, with the assistance of counsel *de officio*, pleaded NOT GUILTY<sup>[6]</sup> to the crime charged.

At the pre-trial conference, the prosecution and the defense failed to make any stipulation of facts.<sup>[7]</sup> The pre-trial conference was then terminated and trial on the merits thereafter ensued.

The prosecution presented the following witnesses: (1) AAA, the private offended party; (2) BBB, mother of AAA; (3) Analiza Pait (Analiza), neighbor and friend of AAA; (4) Dr. Jesus Emmanuel Nochete (Dr. Nochete), Medical Officer IV, Northern Samar Provincial Hospital; and (5) Dr. Vincent Anthony M. Belicena (Dr. Belicena), Medical Specialist II, Northern Samar Provincial Hospital. Their testimonies established the following facts:

AAA is a mental retardate and was 12 years and 11 months old at the time of the rape incident.<sup>[8]</sup> She and appellant, who was then 17 years old,<sup>[9]</sup> are neighbors - their respective houses are adjoining each other.<sup>[10]</sup>

In the afternoon of 9 December 2002, AAA and her friend, Analiza, were in front of the *sari-sari* store of AAA's mother, BBB, while appellant was inside the fence of their house adjacent to the said *sari-sari* store. Shortly, thereafter, appellant invited AAA to go with him to the kiln at the back of their house. AAA acceded and went ahead.<sup>[11]</sup>

Upon seeing appellant and AAA going to the kiln, Analiza, pretending to look for her one peso coin, followed them until she reached a papaya tree located three and a half meters away from the place. Analiza hid under the papaya tree and from there she saw appellant undress AAA by removing the latter's shorts and panty. Appellant, however, glanced and saw Analiza. Frightened, Analiza ran away and went back to the *sari-sari* store of BBB without telling BBB what she saw.<sup>[12]</sup>

Appellant proceeded to satisfy his bestial desire. After undressing AAA, appellant made her lie down. He then placed himself on top of AAA and made push and pull movements. Afterwards, appellant stopped, allowed AAA to sit down for a while and then sent her home.<sup>[13]</sup>

When AAA arrived at their house around 7:30 p.m., she was asked by her mother, BBB, where she came from and why she came home late. AAA replied that she was at the back of their house as appellant brought her there and had sexual intercourse with her.<sup>[14]</sup>

The following day, BBB brought AAA to the police station and then to the Northern Samar Provincial Hospital where AAA was examined by Dr. Nochete.<sup>[15]</sup> The medical examination yielded the following:

The findings are:

= Confluent abrasion 1 x 1 inches, 2 inches below the umbilicus.

Genitalia Exam:

= Admits 1 finger with ease.

= (-) vulvar swelling, (-) erythema.

= (+) complete healed hymenal laceration at 5 o'clock, 7 o'clock & 10 o'clock position.

Gram Stain [R]esult: Negative for spermatozoa.<sup>[16]</sup>

Dr. Nochete explained that AAA could have possibly sustained those complete healed hymenal lacerations more than a month prior to the date of the examination. He also clarified that even though AAA has no fresh hymenal laceration it does not necessarily mean that no sexual intercourse was committed on her on 9 December

2002. It is possible that AAA did not sustain any fresh hymenal laceration because the vaginal canal has become loose. He did not also find any trace of spermatozoa on AAA's vagina, its presence being dependent on whether the appellant did ejaculate or not.<sup>[17]</sup>

AAA was also examined by Dr. Belicena, a Psychiatrist at the Northern Samar Provincial Hospital, who found that AAA is suffering from moderate to severe mental retardation, meaning, AAA is suffering from the specific form of below average intelligence that has a low reproduction functioning resulting in impaired functioning. This finding was obtained through mental examination and actual interview of AAA. Dr. Belicena, however, recommended a full battery of psychological testing to determine AAA's exact mental age.<sup>[18]</sup> Dr. Belicena's finding was reduced into writing as evidenced by a Medical Certificate<sup>[19]</sup> dated 18 May 2004.

For its part, the defense offered the testimonies of (1) Pio Campos (Pio), neighbor and friend of appellant; (2) Cesar Monticalvo (Cesar), appellant's father; (3) Alexander Sanico (Alexander), Local Civil Registrar of Bobon, Northern Samar; and (4) appellant, who invoked the defense of denial and *alibi* to exonerate himself from the crime charged.

Appellant denied having raped AAA. He claimed that on 9 December 2002, at around 1:00 p.m., he, together with Pio and a certain Dinnes Samson, was having a drinking spree in the house of one Adolfo Congayao (Adolfo). They finished drinking at around 6:00 p.m. As he was too drunk, Pio assisted him in going home. He went to sleep and woke up only at 12:00 midnight as he needed to urinate. He went back to sleep and woke up at 6:00 a.m. of the following day, *i.e.*, 10 December 2002. He was surprised that AAA charged him with rape. He was then arrested at around 3:00 p.m. of 10 December 2002.<sup>[20]</sup>

Appellant disclosed, however, that the house of Adolfo, where they had their drinking spree, is more or less six (6) meters away from the house of AAA. In fact, he could still see the house of AAA even when he was in the house of Adolfo. He similarly admitted that he knew very well that AAA is suffering from mental abnormalities. He also divulged that he asked Pio to testify on his behalf.<sup>[21]</sup>

Appellant's testimony was corroborated on all material points by Pio and his father, Cesar, who also admitted that he personally knew AAA as she is their neighbor. Cesar also knew that AAA is suffering from mental disorder.<sup>[22]</sup> Both Pio and Cesar confirmed that on 9 December 2002, they brought appellant to his bedroom and let him sleep there because he was too drunk. Thereafter, Pio and Cesar engaged in a drinking spree inside the latter's house, particularly at the kitchen that is more than two (2) meters away from appellant's bedroom, which lasted until 11:00 p.m. Pio and Cesar likewise stated that there was no moment that appellant went out of his bedroom since the time they brought him there.<sup>[23]</sup>

Alexander, another defense witness, presented appellant's Certificate of Live Birth<sup>[24]</sup> to prove that the latter was only 17 years old during the commission of the crime, *i.e.*, 9 December 2002.<sup>[25]</sup>

The trial court, convinced about the merits of the prosecution's case rendered a Decision on 18 October 2005, finding the appellant guilty beyond reasonable doubt of the crime of rape of a demented person and sentenced him to an imprisonment term of *reclusion perpetua* and ordered him to indemnify AAA in the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

On appeal, the following errors were assigned:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [APPELLANT] FOR THE CRIME OF RAPE OF A DEMENTED PERSON DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT FAILED TO APPRECIATE [APPELLANT'S] AGE, BEING A MINOR, AT THE TIME OF THE COMMISSION OF THE CRIME.

III.

THE TRIAL COURT FAILED TO IMPOSE THE PROPER PENALTY.<sup>[26]</sup>

The Court of Appeals rendered the assailed Decision on 3 December 2009 affirming *in toto* the trial court's Decision dated 18 October 2005.

Hence, this appeal.

Appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt as the testimonies of AAA, BBB, Analiza and Dr. Nochete were replete with inconsistencies and improbabilities. *Firstly*, while the Information stated that appellant raped AAA on or about the 9th day of December 2002 at around 7:00 p.m., Analiza testified that it was in the afternoon of the same day when she saw and heard appellant calling AAA to go to the kiln at the back of their house, and while she saw appellant undress AAA, she did not actually see the sexual intercourse because the appellant saw her watching them, so she ran away. *Secondly*, BBB's testimony that on 9 December 2002, AAA confided to her that she was raped by appellant early that night was inconsistent with the testimony of Analiza that it was in the afternoon of the same day when she saw appellant and AAA going to the kiln, where the former undressed the latter. *Thirdly*, Dr. Nochete's testimony clearly stated that the hymenal lacerations on AAA's vagina could have possibly been sustained by her a month ago, which does not support AAA's claim of rape on 9 December 2002. Even granting that appellant, indeed, raped AAA on 9 December 2002, it is highly implausible that the hymenal lacerations on her vagina were already completely healed when she was examined by Dr. Nochete on 10 December 2002, which was only after less than 24-hours from the date the alleged rape was committed.

Appellant also questions the credibility of AAA as a witness given her condition as a mental retardate. Appellant opines that AAA, could not perceive and is not capable of making known her perception to others. As such, she can be easily coached on what to say or do.

Appellant finally avers that granting *arguendo* that he is guilty of the crime charged, he was only 17 years old at the time of its commission as evidenced by his Certificate of Live Birth. This fact was even attested to by the Local Civil Registrar of Bobon, Northern Samar. Given his minority at the time of the commission of the crime charged, the court should have considered the same as privileged mitigating circumstance in imposing the penalty against him.

This Court affirms appellant's conviction.

At the outset, paragraph 1, Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353,<sup>[27]</sup> provides for two (2) circumstances when carnal knowledge of a woman with mental disability is considered rape. Subparagraph (b) thereof refers to rape of a person "deprived of reason" while subparagraph (d) refers to rape of a "demented person."<sup>[28]</sup> The term "deprived of reason" has been construed to encompass those suffering from mental abnormality, deficiency or retardation.<sup>[29]</sup> The term "demented," on the other hand, means having *dementia*, which Webster defines as mental deterioration; also madness, insanity.<sup>[30]</sup> *Dementia* has also been defined in Black's Law Dictionary as a "form of mental disorder in which cognitive and intellectual functions of the mind are prominently affected; x x x total recovery not possible since cerebral disease is involved."<sup>[31]</sup> Thus, a mental retardate can be classified as a person "deprived of reason," not one who is "demented" and **carnal knowledge of a mental retardate is considered rape under subparagraph (b), not subparagraph (d) of Article 266-A(1) of the Revised Penal Code, as amended.**<sup>[32]</sup>

In this case, both the trial court and the appellate court incorrectly used the word demented to characterize AAA's mental condition and mistakenly categorized the rape committed by appellant under subparagraph (d), Article 266-A(1) of the Revised Penal Code, as amended, instead of under subparagraph (b) thereof. Nonetheless, the mistake would not exonerate appellant. Otherwise stated, his conviction or criminal liability for rape stands though not under subparagraph (d) of Article 266-A(1) of the Revised Penal Code, as amended, but under subparagraph (b) thereof.

Neither can it be said that appellant's right to be properly informed of the nature and cause of the accusation against him was violated. This Court is not unaware that the Information was worded, as follows: "[AAA] is suffering from mental disorder **or is demented** or has mental disability." This fact, however, will not render the Information defective and will not bar this Court from convicting appellant under subparagraph (b) of Article 266-A(1) of the Revised Penal Code, as amended.

In *Olivarez v. Court of Appeals*,<sup>[33]</sup> this Court pronounced that: